THE DECALOGUE JOURNAL

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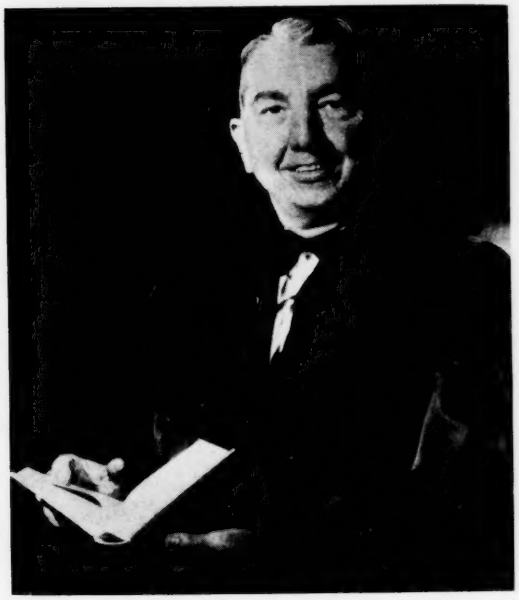
U. S. Justice Thomas C. Clark to Address Society

The Decalogue Society of Lawyers will be host to Supreme Court Justice Thomas C. Clark on his 55th birthday at an Israel Bond dinner on September 21 in the Sherman Hotel at 6:00 P.M. President Elmer Gertz is Honorary Chairman of the affair. Member Congressman Sidney R. Yates will chair the dinner, admission



to which is by purchase of $1,000 or more in Israel Development Issue Bonds per couple, or by sale of $2,000 since July 1, 1954. Individual purchasers of $1,000 will become 1954 members of the Guardians of Israel, an honorary national fraternity of Israel Bondholders in that amount.

New Guardians of Israel will be installed

(*Continued on page* 9)

Justice Clark on Minorities, Religious Freedom, and Constitutional Government

A random sampling of the judicial utterances of Mr. Justice Tom C. Clark of the Supreme Court of the United States reveals that he has spoken out strongly and eloquently against all forms of injustice and unfairness, especially to minority groups.

In *Cassel* v. *Texas*, 339 U. S. 282, a judgement of conviction of a Negro for murder, affirmed by the highest court of the State of Texas, was reversed by the Supreme Court of the United States because of the systematic exclusion of Negroes from grand jury service in the county where the murder indictment had been returned. Justice Clark filed a separate concurring opinion in which he pointed out that the grand jury commissioners infringed upon basic constitutional rights by such exclusionary practices. Said Justice Clark (p. 298):

> Their responsibility was to learn whether there were persons among the Negroes they did not know who were qualified and available for service.
>
> The elimination of this large group in the community from the commissioners' consideration deprived petitioner of constitutional safeguards.

Minority religious groups have been within the field of Justice Clark's concern. In *Dickinson* v. *United States*, (U. S.) 98 & Ed 92, a draft registrant's claim of exemption as a minister of the "Jehovah's Witnesses" was rejected by the draft board on the ground, among others, that he was also engaged in regular employment of a secular nature to supplement his income. Justice Clark, speaking for the majority of the court, overrode the draft board and sustained the exemption, saying (p. 96):

> Many preachers, including those in the more tra-

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BENJAMIN WEINTROUB, Editor

IN THIS ISSUE

President Gertz Appoints Committee Chairmen

The hopes of our new president for a year rich with accomplishments rest upon the chairmen of our organizations committees, the list of which follows.

"The men who are to supply the leadership and carry on our Society's many activities in its relation to the profession and the community have my utmost confidence," Gertz said. "It is through them that we shall enhance the prestige of our bar association and maintain our standing as a constructive factor for civic good in our city, state, and nation."

In several conferences with the chairmen, Gertz urged the need for the enlistment of the interest of the entire membership in the activities ahead.

Standing Committees and Chairmen, 1954-55

Budget	Roy I. Levinson
Chicago Jewish Community Council	Hon. Henry L. Burman
Civic Affairs	Elliot Epstein and Richard L. Ritman
Constitution & By-Laws	Solomon Jesmer
Decalogue Journal	Benjamin Weintroub
Directory and Diary	Oscar M. Nudelman
Entertainment	H. Leo Nye
Ethics and Inquiry	Samuel Allen
Forum	H. Burton Schatz
Foundation Fund	Nathan Schwartz
Harvard-Israeli Law Project	Hon. Harry M. Fisher
House and Library	Louis J. Nurenberg
Inter-Bar Council	Carl B. Sussman
Judiciary	Reuben Flacks
Labor Law	Lester Asher
Legal Aid	Matilda Fenberg
Legal Education	Maynard Wishner
Legislation	Harry G. Fins
Membership	Max A. Reinstein
Membership Retention and Conservation	Marvin Victor
National Organizations	Harry D. Cohen
Organization and Social Welfare	Jack E. Dwork
Orientation of Younger Members Committee	Bernard Weissbourd
Placement & Employment	Michael Levin
Planning	Morton Schaeffer
Public Offices	Saul A. Epton
Public Relations and Publicity	A. Ovrum Tapper
Scholarship Fund	Hon. Samuel B. Epstein and Harry A. Iseberg
Speakers Bureau	Alex M. Golman

Inaugural Address of New President

The installation ceremonies inducting into office Elmer Gertz, the new president of The Decalogue Society of Lawyers were marked by a large attendance of members, their families, and guests. Representatives of the Bench and Bar emphasized the eminent fitness of Gertz, the newly elected Decalogue Society officers and members of the Board for their respective posts. More than thirty judges of the various courts in the City, County and State attended this function.

The affair took place at a luncheon at the Covenant Club, June 25, 1954. Judge A. L. Marovitz of the Superior Court of Cook County was the installing officer. Latham Castle, Attorney General of the State of Illinois made the principal address. Past president, Benjamin Weintroub made the presentation of a gift to the retiring president Paul G. Annes. Other officers installed were Bernard H. Sokol, First Vice-President, Morton Schaeffer, Second Vice-President, Judge Harry H. Malkin, Treasurer, Judge Harry G. Hershenson, Financial Secretary, and Judge Richard Fischer, Executive Secretary.

The president's address follows:

During an active career, I have had the privilege of heading several useful organizations. I have neither sought nor evaded such responsibilities. I have always looked upon a Presidency as considerably more than the acquisition of another noble scalp for my warrior's belt. And in being installed today, as President of The Decalogue Society of Lawyers, I feel a special sense of honor and dedication, aside from any personal elation.

I have tried to define for myself what this position means and the nature of the opportunities it affords. I am the titular head of a large and perhaps powerful association of lawyers and judges. Almost without exception, every Jewish attorney in this community who holds public office or civic trust is a member of our Society.

But there are two larger and more powerful bar groups in the State of Illinois; and eschewing all rivalry, because we feel none, we are on the friendliest terms with both—indeed, we urge our members to belong to them, in self-interest and for the good of the profession. The Decalogue Society, like other bar groups, has a full program of professional activities, which we hope to augment this year.

Heading The Decalogue Society is unlike any other professional honor, because our organization is unique, not alone in this community, but throughout the nation. For better or for worse, there is no other similar Jewish lawyers group in this country, not even in New York City. The whys and wherefores are partly historical, partly geographical and largely fortuitous. Whatever the reasons, we are here to stay, and we must continuously justify our existence by deeds more than words.

ELMER GERTZ

No one should underestimate the bitters and sweets of association with one's own people. Even the most cosmopolitan and unfettered individual—and I think of myself as such—must confess, if only to himself, that there really are ties of blood that bind, that Judaism is a mystical chord that draws together men and women of many ages and lands, of varied

tongues and cultures, in a kind of Holy Union. Every Jew is the keeper of his kind, and a leader of Jews is a special shepherd of his flock—here at home no less than in Israel and abroad. At the same time, Jews have always embraced others in their midst with gladness of heart. There are Ruths in every generation, and Naomis to welcome them.

And it should be said, too, that there have been Jewish prophets since the last books of the Bible were written. We, in The Decalogue Society, had the privilege of honoring one such prophet of blessed memory a few years ago. We provided the forum for Rabbi Stephen S. Wise's last appearance in Chicago. And we saluted another Jewish prophet only a few months ago, when we gave our Award of Merit to Albert Einstein, to whom, as our Editor has said, posterity is indebted.

It seems to me that Rabbi Wise and Professor Einstein epitomize the real meaning of The Decalogue Society. Both men refused to be silent when the voices of injustice, intolerance and conformity were loud in our troubled land. They spoke out with the fire and unconquerable force of the major prophets in defence of morality, truth, fair play, the sanctity of Man and men. They refused to tip their hats or bow their knees or silence their voices in order to appease big Hitlers or little McCarthys.

We in The Decalogue Society are not all heroes or the sons of heroes; but in the two decades of our history, we, too, have tried to do our parts in upholding the Rights of Man. We have not hesitated to speak out against oppressive legislation such as the McCarran-Walter Act, the Broyles Bills and the like. Even before recent hearings in Washington, we formulated a code of fair procedure for Congressional committees, the response to which was magnificent. We have been quick to attack discrimination and bigotry and injustice in every form and guise.

It is not my purpose today to give, in lawyer fashion, a bill of particulars, to spell out in detail what we have done or hope to do. I mean simply to affirm, on this occasion when I am surrounded by so many people who are dear to me, that it is my intent always to remember that only he who is willing to forget petty self-aggrandizement and small matters is fit to lead a proud organization. My predecessors have been men of social vision. I succeed Paul G. Annes, who has been a pillar of decency in this sometimes trying community. We all gain luster from association with him. I hope that my successors will feel, when my term of office expires, that I, too, have done something to advance the interests of our city and the traditions of Decalogue. Towards that end, I bespeak a helping hand and an encouraging word from each of you. Let us swim against the tides of reaction—together.

ELMER GERTZ—BIOGRAPHICAL SKETCH

Elmer Gertz was born in Chicago, Illinois on September 14, 1906, and was educated in the Chicago and Cleveland Public Schools. He has lived his entire life in Chicago, except for a three-year sojourn in Cleveland and a few months in New York City.

He was graduated from the Theodore Herzl Public School in January of 1921 and from the Crane Technical High School in June, 1924. He attended the University of Chicago from 1924 to 1930, receiving his Ph. B. in 1928 and his J. D. in 1930.

Gertz has practiced law continuously since 1930, first in association with McInerney, Epstein & Arvey, where he was the assistant to Masters in Chancery Jacob M. Arvey and Samuel B. Epstein; and for the last twelve years individually. He has been active in several bar associations, including the Chicago Bar Association and The Decalogue Society of Lawyers. He was on two committees of the Chicago Bar Association. A few years ago, he was recommended by the Bar Association for appointment to the Bench. He was a member of the first Statutory Advisory Committee to the Chief Justice of the Municipal Court of Chicago. He was Legislative Chairman of Mayor Kelly's Emergency Housing Committee; a member of Mayor Martin H. Kennelly's Chicago Committee for Housing Action; chairman of the Veterans Housing Committee, a coordinating group for over 100 civic organizations. He was chairman of the Legal Committee of the Housing Conference of Chicago, and was one of its founders and formerly its president. He has long been a member of the Advisory Board of the Chicago Council Against Racial and Religious Discrimination, and was formerly its secretary. He was twice presented with awards by the Council. He has also been presented with an award by The Decalogue Society of Lawyers, and has been saluted by the *Chicago Sun-Times* for his civic activities.

He is a member of the City Club, Ner Tamid Synagogue, various historical societies and other groups. He is on the National Advisory Board for the Commission on Law and Social Action of the American Jewish Congress, and is on the board of the American Friends of the Hebrew University. He was chairman of the Civic Affairs Committee of The Decalogue Society of Lawyers since the formation of the Committee. He was president of the Civil War Round Table. Gertz is the author of various books, pamphlets, plays and articles. He is on the executive committee of the Association of Founders and Friends of Roosevelt College.

Gertz is married and resides with his wife, nee—Samuels, and two children Theodore and Margery B. Ann at 6249 N. Albany Ave.

Suppression of Evidence Obtained by Unreasonable Search and Seizure: A Constitutional Command or a Rule of Procedure

By ARTHUR MAGID

Member Arthur Magid is with the Appeals and Review Division of the Corporation Counsel's Office of the City of Chicago, and a member of the bar of the States of Illinois, Minnesota and Tennessee.

Both the Federal and State constitutions contain express prohibitions against unreasonable searches and seizures (U. S. Const., 4th Amendment; Ill. Const., Art. II, Sec. 6). But not until *Wolf* v. *Colorado,* 338 U. S. 25, decided in 1949, did the United States Supreme Court construe the due process of law provision of the Fourteenth Amendment as affording Federal protection against unreasonable searches and seizures by the several States. Said the court (338 U. S. at pp. 27-28):

"The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit 'in the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause.

* * *

Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

That the *Wolf* decision was one of first impression was explicitly recognized in the recent case of *Irvine* v. *California,* (U. S.) 98 L. Ed. 324, decided in 1954, where the Supreme Court declared (p. 329):

"The decision in *Wolf* v. *Colorado,* 338 U. S. 25, . . . for the first time established that 'the security of one's privacy against arbitrary intrusion by the police' is embodied in the concept of due process found in the Fourteenth Amendment."

From the very first, however, both the State and Federal decisions drew a sharp distinction between the unreasonable search and seizure itself, and the question of the admissibility of the evidence obtained thereby. True, the unreasonable search and seizure is a violation of a basic, substantive constitutional guaranty, and, moreover, constitutes a trespass for which the wrong-doing official can be punished criminally, held accountable in a civil action for damages, or administratively disciplined for his misconduct. But it is quite another question whether the evidence, if otherwise relevant and material, should be excluded from judicial consideration because procured by unlawful means. The inherent competence and admissibility of such evidence has been almost unanimously sustained (24 A. L. R. 1409; 150 A. L. R. 566), but there is a divergence of opinion as to whether it is subject to suppression on pre-trial motion, a majority of the States (approximately two-thirds of them) holding that it is not, (24 A. L. R. 1411-1417; 150 A. L. R. 566-571), and the remaining one-third holding that it is (24 A. L. R. 1417-1424; 150 A. L. R. 571-576). Illinois follows the minority rule of exclusion (*People* v. *Brocamp,* 307 Ill. 448; *People* v. *Castree,* 311 Ill. 392; *People* v. *Martin,* 382 Ill. 192), which is also the rule prevailing in the Federal courts (*Gouled* v. *United States,* 255 U. S. 298; *Goldstein* v. *United States,* 316 U. S. 114). In *Wolf* v. *Colorado,* 338 U. S. 25, the opinion points out (p. 29) that, in 1949, when the case was decided, 30 States applied the rule of admissibility, whereas only 17 States followed the rule of exclusion, with one State apparently uncommitted.

We now come to the crux of the problem under discussion here, namely, whether the rule of exclusion or suppression of illegally procured evidence is a matter of constitutional compulsion or merely of judicial choice. Pragmatically, the very fact that a majority of States follow the rule of admissibility, despite the ban against unreasonable searches and seizures contained in their own constitutions and in the Fourth Amendment of the Federal Constitution which has been carried forward into the Fourteenth Amendment since *Wolf* v. *Colorado,* 338 U. S. 25, would be a strong indication that the rule of exclusion is not a constitutional mandate. For if it were indeed true that the right of a defendant to suppress relevant evidence obtained by unlawful means is comprehended within the guaranties of the State and Federal constitutions against un-

reasonable searches and seizures, then the rule of exclusion would perforce have to be universally applied! But quite apart from its status as a minority doctrine, the rule of exclusion has been authoritatively held to be, not a constitutional command, but merely a judicially created rule of evidence.

This was not always so, however. The United States Supreme Court has wavered between these two alternatives, holding, first, in *Weeks* v. *United States,* 232 U. S. 383, that the Fourth Amendment not only prohibited unreasonable searches and seizures but also barred the reception of any evidence procured by such means, but concluding, later, that the admission of such evidence did not violate constitutional guaranties (*Wolf* v. *Colorado,* 338 U. S. 25; *Irvine* v. *California,* (U. S.) 98 L. Ed. 324).

Before the dissipation of the doctrine of the *Weeks* case by the later decisions aforementioned, several of the States, among them Illinois, apparently felt constrained to adopt the rule of exclusion as a matter of constitutional compulsion. (See the tabulation of State decisions on the subject before and since the *Weeks* case as set forth in the Appendix to the court's opinion in *Wolf* v. *Colorado,* 338 U. S. 25, 29, 33-39.) The Illinois case history is particularly illuminating. Prior to the *Weeks* decision, which was rendered in 1914, the Illinois Supreme Court had held that relevant evidence was admissible despite its procurement by unreasonable search and seizure (*Gindrat* v. *People,* 138 Ill. 103 (1891); *Siebert* v. *People,* 143 Ill. 571 (1892). The Illinois Supreme Court gave some cogent reasons for so holding.

Thus in the *Gindrat* case, the court said (138 Ill. at p. 110):

"It is perfectly manifest, then that there was no legal justification for the searching of the rooms and the seizure of the jewelry. The acts of DeSell (the police officer) were in violation of the rights of plaintiffs in error, and a trespass, for which they may hold him legally accountable in a civil action. But what bearing does that have on the case at bar? Does the fact that DeSell gained knowledge of the facts in respect to which he testifies, by the commission of a trespass, prevent the State from having the benefit of such facts? If the jewelry which he produced and identified at the trial was otherwise competent evidence, and tended to establish the issue, should it be excluded from the jury merely because he gained possession of it by the commission of a trespass?" (Words within parenthesis supplied).

The case of *Boyd* v. *United States,* 116 U. S. 616, was urged upon the court as calling for a contrary conclusion, but the court distinguished the *Boyd* case by pointing out that, there, the trial court had affirmatively authorized an unreasonable search and seizure not yet perpetrated, whereas in the *Gindrat* case the evidence had already been obtained and the court was not being asked to order its procurement by unlawful means (138 Ill. at pp. 111-112). Significantly, the court concluded as follows (138 Ill. at p. 112):

"We think that the admission of the jewelry in evidence in this case was in violation of no constitutional rights of plaintiffs in error growing out of the tortious means by which DeSell got possession of it."

However, after the decision in the *Weeks* case in 1914, the Illinois Supreme Court considered it necessary to abandon the rule of admissibility and adopt the rule of exclusion *as a matter of constitutional requirement.* In *People* v. *Brocamp,* 307 Ill. 448 (1923), it was held "for the first time" (p. 456) that the defendant was entitled to have his objection sustained to the reception in evidence of all documents taken from him by unreasonable search and seizure (p. 456). This deviation was repeated in numerous subsequent decisions, among them the following: *People* v. *Castree,* 311 Ill. 392; *People* v. *Martin,* 382 Ill. 192. An examination of the *Brocamp, Castree* and *Martin* cases reveals that all of them rely strongly on the *Weeks* decision and treat the rule of exclusion as constitutionally mandatory. There is also an attempt in some of these cases to distinguish the *Gindrat* and *Siebert* cases on the basis that they involved wrongful conduct by private individuals, but a reading of the *Gindrat* and *Siebert* decisions shows clearly that they involved misconduct by police officials in attempted performance of their police duties.

In view of the controlling weight given by the Illinois Supreme Court to the *Weeks* decision, it is pertinent to inquire what the later rulings of the Supreme Court of the United States have been on the question of whether the rule of exclusion is a binding constitutional inhibition upon State action. That it is so no longer, is quite apparent from these later decisions.

Thus, in *Wolf* v. *Colorado,* 338 U. S. 25, the court said (p. 33):

"We hold, therefore, that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.

Mr. Justice Black, in a concurring opinion, stated (pp. 39-40):

"But I agree with what appears to be a plain implication of the Court's opinion that the federal exclusionary rule is not a command of the Fourth Amendment but is a judicially created rule of evidence which Congress might negate."

In *Irvine* v. *California*, (U. S.) 98 L. Ed. 324 (1954), the doctrine of the *Weeks* case was again repudiated and the principle of the *Wolf* case reaffirmed, so that at the present time the Supreme Court of the United States stands clearly committed to the view that the rule of exclusion is not a constitutional mandate, and that the rule of admissibility does not impinge upon the constitutional guaranty against unreasonable searches and seizures.

In view of the fact that the Illinois Supreme Court abandoned the rule of admissibility and adopted the rule of exclusion because of the *Weeks* decision, the rejection of the *Weeks* doctrine, as applicable to State action, by later decisions of the United States Supreme Court raises the question whether the rule of exclusion ought not to be rescinded and the rule of admissibility restored in order to bring the law of Illinois into harmony with that of the majority of the States on that subject, as it was heretofore.

In this connection, it is noteworthy that the United States Supreme Court, in its most recent decision on the subject, (*Irvine* v. *California*, (U. S.) 98 L. Ed. 324), has expressed grave doubt as to the efficacy of the rule of exclusion in discouraging illegal searches and seizures (p. 331), and has criticized the rule as permitting the guilty to escape without protecting the innocent or punishing the wrong-doing official (p. 332). The court pointed out, on the other hand, that the rule of admissibility does not exonerate the wrong-doing police officer from the penal, civil or disciplinary consequences of his invasion of the constitutional rights of another (p. 332). It may well be asked whether the time is not now ripe for the Illinois courts to re-evaluate the two doctrines in the light of the foregoing appraisal by the United States Supreme Court, free from the constraint of the *Weeks* decision which has been held no longer to control State action.

Begin Society's Great Books Course on September 13

The enthusiastic reception of The Decalogue Society sponsored Great Books Course, last year, led Messrs. A. Weinrob and O. M. Nudelman, in charge of the meetings, to announce the formation of a second year discussion group.

Among the scheduled reading in this year's Great Books Course are:

Homer: Odyssey
Herodotus: History of the Persian Wars
Aeschylus: House of Atreus
Sophocles: Oedipus the King, Antigone
Aristotle: Poetics
Plato: Meno

Members and their friends may join and participate regardless of their absence from the first year's course. The first session is scheduled for September 13th; the following on October 4th; thereafter, on every alternate Monday. All meetings will begin at 6:15 P.M. and will continue for two hours. The sessions will take place at the Society's offices at 180 West Washington Street. All inquiries should be directed to Oscar M. Nudelman, FRanklin 2-1266 or Alec E. Weinrob, FRanklin 2-7266. There is no charge for this course.

INTER-AMERICAN BAR ASSOCIATION

Several members of our Society joined hundreds of visitors to the American Bar Association Annual meeting in Chicago, at a reception August 17th in the Conrad Hilton Hotel. This event was sponsored by the Inter-American Bar Association in cooperation with the Committee on International and Foreign Law of the Chicago Bar Association and the Chicago Branch, American Foreign Law Association.

The Decalogue Society of Lawyers is a member of the Inter-American Bar Association.

ISIDORE BROWN ON CHICAGO RECREATION COMMISSION

Member Isidore Brown, Master in Chancery of the Circuit Court, was appointed a member of the Chicago Recreation Commission by Mayor Martin H. Kennelly. Mr. Brown is also a director of the Exchange National Bank of Chicago.

The Practice of Law and the Young Lawyer

By BERNARD WEISSBOURD

Member Weissbourd is chairman of The Decalogue Society of Lawyers Orientation of Younger Members Committee.

A project which may make a major contribution to the legal profession has been initiated by the Orientation of Younger Members Committee of The Decalogue Society of Lawyers. As a result of the efforts of this Committee, Professor Hughes, the Chairman of the Department of Sociology at the University of Chicago, and Professor Zeisel of the University of Chicago Law School, have agreed to supervise a sociological investigation of the gap between what the young lawyer expects of his work and his actual experience as he attempts to establish himself in the practice. The research will be undertaken by Mr. Dan C. Lortie in preparation for his Ph. D. thesis.

Mr. Lortie is eminently well qualified to conduct the proposed survey. He received his B. A. Degree from McGill University and his Master's Degree in Sociology in 1949 from the University of Chicago. He has had extensive research experience and for the last three years has been Field Director of the National Opinion Research Center, an organization which has conducted numerous major attitude studies. Mr. Lortie has already prepared a comprehensive prospectus and research outline which the Committee has circulated to a number of members of The Decalogue Society for their opinions. The enthusiastic response to this project has been most encouraging. By cooperating with Mr. Lortie in this survey and in stimulating studies of this kind, The Decalogue Society will be performing a most valuable service for the legal profession.

Research is very much needed in this entire area. While experienced lawyers have some knowledge of the contrast between the realities of the practice of law and the expectations of law students, no systematic study of this problem has ever been attempted. How many young lawyers experience sharp disappointment or "shock" upon embarking upon their careers? And how does it affect them? Which young men have the hardest time adjusting to the transition from school to work? What facts about the actual practice of law were not expected and which of these cause young lawyers to leave the profession? To what extent are the careers of young lawyers affected by racial and religious factors?

The answers to questions such as these are essential in order to advise young persons in the choice of law as a career, to assist the law schools better to equip the student for his profession and to gain some systematic insight into the nature of the law as it is practiced. Moreover, information of this kind will undoubtedly be helpful to The Decalogue Society in its program of bringing about closer liaison between law students and the Society. For instance, the information obtained will be useful to the speakers who have already been invited to speak to law students at the various law schools through the efforts of our Sub-Committee dealing with law students. Moreover, as a by-product of this study, it is hoped that the information obtained will be of value to our Sub-Committee on referrals under the leadership of Michael Levin.

Mr. Lortie's survey will not necessarily answer all of the questions here raised. These are the very beginning questions and as the study progresses some will be omitted while others will be added as they arise in the course of further investigation. Thus, while the main emphasis of the study is upon the shock experience of young lawyers, in the course of the study, there will be gathered a body of objective data—personal, social and financial, which will allow a description in great detail of the factors which affect the careers of beginning lawyers. It is expected that reliable statistical data will be acquired on two entire graduating classes from all of the schools in the Chicago area, i.e., De Paul, Kent, Loyola, John Marshall, Northwestern, University of Chicago, and University of Illinois. Thus, answers may be obtainable to such questions as:

> How many young lawyers go out on their own? Which men join law firms and which enter business in a non-legal capacity? What factors influence these choices? How do grades in law school affect the financial success of young lawyers? How do young lawyers who are members of racial and religious minorities compare with others in terms of income?

Comparisons will also be made with findings from recent surveys conducted by the United States Census Bureau and the American Bar Association.

The initial stages in the survey will involve interviews with a substantial number of lawyers in practice, senior law students and special informants such as judges, bar association officers and law school personnel. In addition, some contact will be made with a small group of men who have left the legal profession. The material gathered by the personal interviews will be translated into terms that allow the gathering of quantitative data, and a self-administered questionnaire will be prepared.

Our Sub-Committee concerned with this survey, under the leadership of member Martin Faier, has already performed considerable service in assisting Mr. Lortie in obtaining the information necessary to prepare his research proposal. Other members of the Sub-Committee are Arthur Debofsky, George S. Feiwell, Earl Glick and Michael M. Mitchel. In addition, past-president Paul G. Annes, who initiated this committee's project, as well as president, Elmer Gertz, and member Nathan Schwartz, have been particularly helpful in contributing their ideas, and in their support of the entire project. Undoubtedly some members of The Decalogue Society will be called upon in the course of the interviews and some will ultimately receive the questionnaire. We hope that any member so contacted will co-operate to the fullest extent.

We believe that this pioneer survey will be of considerable importance in increasing the lawyer's understanding of himself and of his practice, and that The Decalogue Society of Lawyers in initiating this project has once again demonstrated its traditional alertness to the needs of the profession.

Justice Clark to Address Society

(*Continued from page* 1)

into the fraternity by Simcha Pratt, Midwest Consul of Israel, and will be entitled to attend the Testimonial Dinner to Member Colonel Jacob M. Arvey on November 6 in the Conrad Hilton Hotel, at which Adlai Stevenson, Bishop Bernard J. Sheil and Israel Ambassador Abba Eban will be guest speakers. The Decalogue Society sponsored Israel Bond dinner will be Justice Clark's first appearance in the United States on behalf of Israel's program for economic growth. Justice Clark's appointment to the Supreme Court by former President Truman climaxed a career for the former Attorney General which included such distinguished Justice Department posts as Special Attorney for the Bureau of War Risk Litigation in 1937; Special Assistant to the Attorney General assigned to the Antitrust Division of the Justice Department in 1938; Coordinator of Alien Enemy Control Western Defense Command, for Japanese War Relocation in 1942; Chief, War Frauds unit, Assistant Attorney General in charge of the Antitrust Division in 1943; Assistant Attorney General in Charge of Criminal Division.

The dinner committee includes as Executive Vice-Chairman Harry A. Iseberg; Vice-Chairmen Paul G. Annes, Hon. Jacob M. Arvey, Morris S. Bromberg, Judge Harry M. Fisher, Judge Henry L. Burman, Judge Harry G. Hershenson, Senator Marshall Korshak and Senator Edward P. Saltiel.

Serving as sponsors for the dinner are Maxwell N. Andalman, Samuel Berke, David S. Bern, Archie I. Bernstein, Lionel I. Brazen, Robert E. Cherry, Joseph B. Denenberg, Richard Fischer, Julius Fishman, Samuel Fishman, Max M. Forman, Harold E. Friedman, Paul Gendel, Michael A. Gerrard, Eli A. Golan, Daniel Gombiner, Leonard J. Grossman, Solomon E. Harrison, Harry Hoffman, Samuel F. Jacobson, Louis L. Karton, Samuel Kassel, Samuel W. Kipnis, Leon A. Kovin, Luis Kutner, Samuel T. Lawton, Irving D. Levin, Michael Levin, Judge Harry Leviton, Norman R. Liebling, Maurice Liebman, Arthur Magid, Harry H. Malkin, Benjamin I. Morris, Herman H. Moses, Norman H. Nachman, Louis J. Nurenberg, Richard L. Ritman, William Jay Robinson, Isadore S. Rosin, Maurice H. Ruttenberg, Morton Schaeffer, Hyman Schechet, Charles K. Schwartz, Lawrence G. Shender, Carl B. Sussman, Louis Weingart, Benjamin Weintroub, and Maynard I. Wishner. *(Partial List)*

The present development issue which was initiated in May of this year, is the second of the Israel Bond flotations. The first—the Independence Issue—was the most successful foreign bond issue ever sold in the United States. Its success led to the floating of the present issue on a world-wide basis, including North America, South America, the British Commonwealth countries, and Europe.

Funds from the sale of Israel Bonds will be used to finance the remarkable economic progress in the new State of Israel. This has included projects like the development of mineral resources such as the copper mines in the Negev, hydro-electric power stations, and new industries both for the production of domestic and export goods.

Justice Clark on Minorities

(*Continued from page* 1)

ditional and orthodox sects, may not be blessed with congregations or parishes capable of paying them a living wage. A statutory ban on all secular work would mete out draft exemptions with an uneven hand, to the detriment of those who minister to the poor and thus need some secular work in order to survive.

Justice Clark has also added his judicial voice to the group of resolute men who are insisting that our fight against subversion can and must be won without declaring a moratorium on the Bill of Rights. In *Wieman* v. *Updgraff,* 344 U. S. 183, the Supreme Court of the United States held invalid an Oklahoma "loyalty oath" statute because it excluded persons from public employment regardless of their knowledge or lack of knowledge concerning the activities and purposes of the organizations (listed as "subversive") to which they had belonged. Justice Clark, speaking for the court, recognized the threat to our national security which can result from having disloyal employees in governmental positions, but nevertheless declared (p. 188):

Democratic government is not powerless to meet this threat, but it must do so without infringing the freedoms that are the ultimate values of all democratic living.

In view of the current campaign by some dangerous pressure groups to utilize our healthy fear of communism as a justification for abrogating our constitutional rights, the clear and bold words of Justice Clark, warning against fighting subversion by unconstitutional methods, is warmly reassuring to all loyal and liberty-loving Americans.

VOLUME II MISSING

The Decalogue Society Librarian reports that Volume II of Nickols' Illinois Civil Practice set is missing. It is urgently requested that the reader who borrowed this volume return it to our library shelves.

Candidates for Public Office

The following members of our Society are candidates for public office in the general election in the City of Chicago and in Cook County, November 2, 1954:

For Associate Judgeships of Municipal Court

Democratic— Jay A. Schiller
Hyman Feldman David Lefkovitz
Republican— Victor H. Goulding
Louis Leider Harold A. Siegan

For Office of Bailiff, Municipal Court

Republican— S. S. Schiller

For Member of the Board of Appeals

Republican— Eli A. Golan

Candidate for County Commissioner, City of Chicago

Republican— Nathan N. Eglit

Candidate for County Commissioner, Country Towns

Democratic— Henry X. Dietch

Candidate for State Senator

Democratic—
Marshall Korshak, 5th Senatorial District
Robert E. Cherry, 31st Senatorial District
Republican—
William D. Saltiel, 31st Senatorial District

Candidate for State Representative

Democratic—
Benjamin Nelson, 19th Senatorial District

Candidate for Congress

Democratic—
Sidney R. Yates, 9th Congressional District

CHEVY CHASE CHOICE POPULAR

The Decalogue Society of Lawyers Twentieth Annual Outing at Chevy Chase Country Club July 16, reports Bernard H. Sokol, Chairman of the event, surpassed all former outings in attendance and popularity. There was strong approval of the choice of Chevy Chase as the scene of the Decalogue annual gala event. Mrs. Harry A. Iseberg was in charge of activities, games, and entertainment for the wives and lady guests of members of our Society.

IRWIN N. COHEN, CHIEF COUNSEL

Member Irwin N. Cohen, for the past fifteen years Assistant United States Attorney, was appointed by the City Council Emergency Crime Committee as its Chief Counsel.

APPLICATIONS FOR MEMBERSHIP

MAX A. REINSTEIN, *Chairman*

APPLICANTS	*SPONSORS*
Philip S. Aimen	Michael Levin
Bernard C. Arkulus	Richard Fischer
David S. Cohen	Benjamin M. Loiben and Samuel Cohen
George S. Feiwell	Michael M. Mitchel and Bernard Weissbourd
Marvin D. Friedman	Alexander Kaplan and Benjamin Weintroub
Emil Jacobs	Edward M. Klein
Jerome Kaplan	Elmer Gertz and Irving Friedman
Julian M. Kaplin	Bernard H. Sokol
Harold L. Kulbarsh	Richard Fischer
Marvin Levin	Alex M. Berk and Irven Gilbert
Maurice Liebman	Benjamin Weintroub and Elmer Gertz
Abe M. Linderman	H. Burton Schatz
Nathan T. Notkin	George M. Schatz and Joseph Denenberg
Bernard M. Peskin	Earl A. Deutsch and Samuel Siegel
Simon S. Porter	Benjamin Loiben and Samuel Aronfeld
Abram A. Schwarzbach	Benjamin Weintroub and Harold E. Friedman
J. Henry Wolf	Richard Fischer

ELECTED TO MEMBERSHIP

Joseph Albaum
Neal S. Breskin
Arnold F. Brookstone
Bruce E. Clorfene
Max L. Feinberg
Lawrence Jacobs
Irving Meyers
Mary Gerber Oppenheim
Isaac B. Shapiro
Bert Edward Sommers
Robert L. Weiss
Selwyn Zun

HAROLD E. FRIEDMAN

Member Harold E. Friedman was reelected to an unprecedented third term as Grand Master of the Progressive Order of the West, one of the oldest Jewish Fraternal Organizations in the United States, which consists of 5,000 members throughout fifteen states in the Union. Members Hyman L. Brody and Abram A. Schwarzbach were elected to the National Executive Board.

JOBS FOR YOUNG LAWYERS?

More than ever before, reports Michael Levin, Chairman of the Decalogue Placement Committee, is there need for jobs in law offices for the newly admitted young lawyers to the Illinois Bar. Mr. Levin urges members of our Society who have clerkships or other positions available in their offices or know of such elsewhere to write or phone him. He is at 134 N. La Salle St. Telephone ANdover 3-3186.

Recent Developments Under The Illinois Retailers Occupational Tax Act

By SAMUEL F. JACOBSON

Member S. F. Jacobson has been practicing law in Chicago since 1915. He is a frequent writer in legal periodicals on various aspects of law.

The Illinois Retailers' Occupational Tax Act became effective July 1, 1933. It is a hybrid act, because, although it is commonly known as a sales tax law, it is in fact neither a sales tax nor a use tax law. The intention of the Act is to tax sales for the privilege of doing business at retail. If a sales tax were attempted, it would have been in violation of the Illinois State Constitution; *Reif* vs. *Barrett,* 355 Ill. 104.

The effect of the law, therefore, instead of imposing a sales tax, is to impose an occupational tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The Act provides that the seller pay the tax, and it has no provision for passing this tax on to the ultimate purchaser. Under the present Act, the vendor is liable for 2% of 98% of its gross receipts from retail sales made for use and consumption. The Act deals only with retail sales and imposes a tax only on people engaged in the business of selling tangible personal property. Therefore, isolated or occasional sales, shares of stock, bonds, real estate, personal property purchased for resale or for use by service occupations, publications, sheet music and records, are exempt (see Articles 2 and 5 and Rule No. 2 of Rules and Regulations issued by Department of Revenue).

The absence of a definition of "use and consumption" in the original Act brought about a great deal of confusion in its interpretation. The courts applied the ordinary and popular meaning of the words. In order to clarify the confusion arising out of a long line of decisions, the Illinois Legislature in 1941 made an attempt to amend the Act. The attempt was not successful because the Supreme Court held the amendment was in violation of the State Constitution, and inconsistent with the definition of a sale at retail, as defined by the Act. *Stolze Lumber Co.* v. *Stratton,* 386 Ill. 334.

It is to be noted that in decisions involving specific tax application there is inescapable uncertainty because no general rule can be formulated to cover all types of retail sales. Each set of facts brings about a special situation, without any assurance as to what the court may do on different facts. A series of specific cases were taken to the Supreme Court for interpretation, which resulted in holding leather goods used by shoe repairmen, optical goods used by optometrists, medical supplies used by hospitals and doctors, and building supplies used by contractors, as not subject to tax because the retransfer is incidental to the furnishing of service. *Revzan* v. *Nudelman,* 370 Ill. 180; *American Optical Co.* v. *Nudelman,* 370 Ill. 627; *P. H. Mallen Co.* v. *Dept. of Finance,* 372 Ill. 598; and *Material Service Corp.* v. *McKibben,* 380 Ill. 226. Each decision created some doubt about specific applications of "use or consumption" in application to other retail sales.

Fefferman v. *Morohn,* 408 Ill. 542, reached the Supreme Court in 1951. The case involved the sale of uniforms to a State penal institution. The court held that altho the vendees were not the ultimate users of the uniforms, the sale was for use and consumption, and made the tax applicable. This was an open and shut case, and the court nailed down the doctrine of final use and consumption, as it applied to supplies to State institutions. However, a new set of facts was brought before the court in the *Modern Dairy Co.* v. *Department of Revenue,* 413 Ill. 55. The case raised the question whether a State Institution was the user or consumer of milk, when it supplied same to its patients, some of whom performed services in the kitchen and dining rooms and other menial services. The court held that such services could not be regarded as a consideration for the milk consumed, and therefore the sales were taxable.

This decision caused the Department of Revenue to issue a new set of rules as of December 13, 1952, imposing taxes on all

businesses selling supplies and material which were incidental to the services rendered. Thus, by one fell stroke, a lame duck Department of Revenue reversed all of the cases involving service occupations, sales to whom the Supreme Court had theretofore consistently held to be non-taxable.

By this time, the creeping confusion reached a stage of utter chaos. Hundreds of taxpayers applied to the courts to sustain previously entered injunctions. On motion of the Attorney General of the State of Illinois to vacate the pending injunctions, the courts denied the motion and were sustained in two test cases appealed to the Supreme Court, viz.: Material Service Corporation, et al, 415 Ill. 284, involving sales of building materials and supplies to contractors, and the Burrows Co., et al, 415 Ill. 202, involving sales of medical supplies to hospitals and doctors. The Supreme Court promptly distinguished the above cases from the Modern Dairy Case and again held that persons engaged in service occupations, or those who sell to such persons, are not subject to the tax.

In the meantime, a unique situation developed from the long line of specific decisions. A tax was being imposed on sales made to the State of Illinois and to all charitable institutions such as blind and old peoples' homes, institutions for the distressed, Y. M. C. A. and C. Y. O. organizations. On the other hand, private clubs and hospitals, operated for profit, were tax exempt. This situation was contrary to all civilized theories of taxation.

On August 1, 1953, the Illinois Legislature remedied this inequity by enacting a law making all sales to the State of Illinois, any county, political subdivision or municipality, or to any charitable, religious or educational organization, exempt from taxation. However, the exemption did not include sales to the Federal Government. (See Rules 38 and 40). A recently filed case challenges the legality of Rule 40, in that it violates the definition of a sale at retail pertaining to sales to the United States Government. The State is contesting the suit which ultimately will be decided on appeal.

Limited space does not permit discussion of Refund Section 6 of the Act. This is of unusual interest. It has been borrowed from the unjust enrichment provision of the Federal Code. It further illustrates how the Act was compiled from various sources. Section 6 has caused a great deal of hardship in attempting to recover illegally collected taxes paid under duress, and the threat of revocation of certificate of registration, without which the taxpayer is unable to operate his business. The actual result of the harsh provisions of Section 6 has had the effect of unjustly enriching the State of Illinois, enabling it to retain millions of dollars of illegally collected taxes.

In conclusion, I direct your attention to a 279-page Rules and Regulations Book, in loose leaf form, issued by the Department of Revenue. Any lawyer dealing with the provisions of this Act has the responsibility of keeping informed. Changes in the law, and rules and regulations are made from time to time, and the Supreme Court has held that as long as the rules conform to the Act, they have the effect of law.

Judicial Candidates Luncheon Oct. 22

The Decalogue Society of Lawyers traditional forum luncheon meeting in honor of all of the Judicial candidates for office, both Republican and Democratic will be held on Friday, October 22 at the Covenant Club. Members are urged to invite friends in the profession.

IRVING BREAKSTONE

Irving Breakstone, local attorney long active in the American Legion was elected Illinois State Commander of the Legion.

CANADIAN MEMBER, AUTHOR

Member Louis Mort Bloomfield, Queen Council, Montreal, Canada, is the author of a recent volume entitled *The British Honduras-Guatemala Dispute.*

ALEXANDER KAPLAN

Member Alexander Kaplan was re-elected President of the American Blood Research Society.

Summary Report of the Civic Affairs Committee of The Decalogue Society of Lawyers on Proposed Wire Tapping Legislation

By ELLIOT EPSTEIN and RICHARD L. RITMAN, Co-Chairmen

The full text of this report recently appeared in the Congressional Record.

In 1928 the Supreme Court of the United States, in *Olmstead* v. *United States*, 277 U. S. 438, held, in a five-to-four decision, that the introduction into evidence of tapped telephone conversations was violative of neither the Fourth Amendment's protection against unreasonable search and seizure nor the Fifth Amendment's prohibition against compulsory self-incrimination and denial of due process.

There is considerable basis for the conclusion that it was this decision which led the Congress, in 1934, to enact the Federal Communications Act, Section 605 of which provides, in part, that

> "No person not being authorized by the sender shall *intercept* any communication *and divulge* or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person."

It is clear that exclusionary rules which exist today in the Federal courts, in regard to the admissability of evidence directly or indirectly obtained by wire tapping, are based not upon constitutional obstacles but upon the prohibitions of Section 605 of the Federal Communications Act. That Congress has the power to remove these prohibitions seems unquestioned.

Proponents of wire tapping legislation stress, in general, the need to protect our country against criminals. Earlier advocates dramatized the serious and evil nature of specific crimes, like kidnapping and extortion, and pointed out why wire tapping was an investigative technique particularly well suited to detection in such cases. More recently though, emphasis has been laid upon its use "in criminal prosecutions for offenses against our national security," and the pending legislation so confines its scope. The need for such legislation to aid in the detection of "espionage, sabotage, treason, and other subversive crime" is said to be patent and to deprive Federal agents of this means of detection is to leave "their hands shackled by the operation of our very own law." H. R. Report No. 1461, p. 4, supra.

Opponents of such legislation are disturbed by a variety of things. As a policy matter most opponents would probably agree with the following statement from the Report of the Committee on Civil Rights of The Chicago Bar Association dealing with the same subject:

> "As a matter of policy, this committee feels that wire tapping is an evil which generally ought to be prohibited by law. In general, Americans should have an enforceable right to speak freely over the telephone. Although the right to be secure from the introduction of wiretap evidence in court is directly valuable only to those whom the government may prosecute, the right not to be spied on is valuable to all. No government, however benign, should invade the right to privacy which is one of the factors making American citizenship so valuable."

During debate in the House of Representatives, Rep. Yates (D. Ill.), pointed out that he did doubt that much evidence was obtainable by wiretapping, just as "brutality, the third degree, and illegal search and seizures" were productive totalitarian law enforcement measures, and he quoted from a study reported in 52 Columbia Law Review 164, pp. 196-97, as finding that "corruption, blackmail, misuse of warrant procedures, failure to prevent un-authorized wiretapping, and loss of general confidence in the security of the telephone as a medium of communication" had been the result of New York's experience with wiretapping even under judicial supervision. This we believe to be sufficient answer to those who suggest that the possible ends here justify the proposed means.

Additional objections to wire tapping legislation may be briefly summarized as follows:

(1) Unlike a search warrant, a wire tap order cannot be selective or restrictive. Tapping the wires of suspect *A* involves intrusion into the conversations of *B*, *C* and *D* with *A*, however innocent the conversations may be and however innocent of any wrongdoing one or all of them may be. Mr. Justice Brandeis, in an historic dissent in the *Olmstead* case, pointed out that "The evil incident to invasion of the privacy of the telephone is far greater than that involved in tampering with the mails. . . . As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire tapping."

(2) Senator Morse, in an article which appeared in the January 11, 1954 issue of Newsweek magazine, wrote that wire tapping "is a cover-up for lazy, inefficient, unimaginative, ruthless law-enforcement administration. Policy tyranny is no substitute for police protection." Even Mr. J. Edgar Hoover, Director of the Federal Bureau of Investigation, in a time of less stress, termed wire tapping an "archaic and inefficient" procedure which "has proved a definite handicap or barrier in the development of ethical, scientific, and sound investigative technique." Letter dated Feb. 9, 1940, quoted in 53 Harv. Law Rev. 863, 870 (1940).

(3) Apart from moral and ethical considerations, there is considerable skepticism about the effectiveness of wire tapping in apprehending criminals. This is probably especially true of cases relating to national security, and less true of cases involving kidnapping and extortion where the telephone is freely used.

(4) There is little basis for expecting that Federal agents and the Department of Justice itself, as a matter of departmental policy, will not abuse wire tapping privileges, however restricted. Almost since the passage of Section 605 of the Communications Act of 1934 the Department of Justice has taken the position that the department's agents can tap wires—as it now admits it does on a large scale—providing the information is not divulged to anyone outside the department.

* * *

The Board of Managers unanimously approved the above report and its recommendation that pending legislation relating to wire tapping not be enacted. Copies of this report were sent to all members of the Senate and to all Illinois Congressmen.

Recent Matrimonial Cases of "First Impression" in Illinois

By MEYER WEINBERG [1]

[1] Member Weinberg, a frequent writer on legal subjects, is the author of a recent volume *Illinois Divorce, Separate Maintenance and Annulment.*

Within recent months, there have appeared in the Illinois Reports, the following matrimonial cases which are of singular importance because they are of "first impression" in this State.

Impotency as Ground for Annulment

Linneman v. Linneman, 1 Ill. App. 2d 48 (1954) [2]

Mrs. Linneman was granted, on July 2, 1947 a decree of divorce, which among other things, provided for alimony monthly, until her death or remarriage. She remarried in Illinois (her alimony ceased) and moved to California. After four months she separated from this husband, and a year after the marriage she secured a decree of Annulment in California, based on impotency; this decree was perfunctory and the impotency was not corroborated. She then demanded that the previous husband resume alimony payment. He refused to pay. Having moved to Glencoe, Illinois, she initiated contempt proceedings in Cook County. The trial court denied her petition.

The Illinois Appellate Court (1st District) in affirming, stated, pp. 55-56:

> "There is no reported case where a decree of annulment was granted on the ground of impotency. There is, however, strong language to the contrary in the dictum of the case of *Reighly* v. *Continental Illinois National Bank,* 390 Ill. 242. . . .
>
> "While impotency or physical inability to consummate a marriage has been a ground for divorce in Illinois since 1827 (Ill. Rev. Stat. 1827 p. 181) Ill. Rev. Stat. 1827 p. 181) Ill. Rev. Stat. 1951, chap. 40, Sec. 1, it never has been held a ground for annulment nor has any statute so provided. We, therefore, hold that impotency is not ground for annulment in Illinois. It follows that the decree of the California court granting plaintiff an annulment from her second husband on this ground is of no force or effect in this State and is not binding on the defendant.
>
> "We conclude that the full faith and credit clause of the Federal Constitution as applied in *Sutton* v. *Lieb* is not applicable in this instant case."

[2] See: 42 Ill. Bar. J. No. 8; 3 De Paul Law Rev. at p. 284; 32 Chicago-Kent Law Rev. at p. 262

Effect of Sister-State (Nevada) Decree on Prior Illinois Separate Maintenance Decree

Pope v. Pope, 2 Ill. 2d 152 (1954) [3]

The wife filed separate maintenance proceedings in Illinois based on constructive desertion and the husband counter-claimed for divorce based on desertion. The wife was granted a decree of separate maintenance providing $225.00 per month. The husband then filed a proceeding for divorce in Nevada based on desertion. The wife was notified but did not appear. Neither the complaint or report of proceedings show that the defendant advised the Nevada court of the prior separate maintenance litigation in Illinois. The Nevada decree of divorce did not award alimony and made no reference to the Illinois decree. Six years later the wife petitioned to convert the arrearage to judgment. The husband's defense was that he secured a decree of divorce in Nevada. The wife's petition was denied and she appealed.

The Illinois Supreme Court in reversing in favor of the wife, stated, pp. 154-157:

> ". . . we hold that the Nevada decree, although regarded as a valid determination of the parties' capacity to remarry, does not have the effect of terminating the plaintiff's right to support. . . . Marriage is an aggregate of rights and duties; a decree of divorce enables the parties to contract a new marriage; that it does not necessarily relieve them of all the obligations of the old relationship is witnessed by the award of alimony upon or even after divorce. Ill. Rev. Stat. 1953, Chap. 40, Par. 10; of *Darnell* v. *Darnell,* 212 Ill. App. 601; *Estin* v. *Estin,* 334 U. S. 541; *May* v. *Anderson,* 346 U. S. 528."

This type of problems was reported for the first time in Illinois and is comparable to *Estin* v. *Estin,* 334 U. S. 541 which introduced the concept of "Divisible Divorce," new to American jurisprudence.

Post-Decretal Allowance of Alimony, Where Decree Was Silent

Larson v. Larson, 2 Ill. 2d. 451 (1954)

Larson sued his wife for divorce based on desertion. A decree of divorce, based on default

[3] See: Divisible Divorce in Illinois, by M. Weinberg, in the Chicago Bar Record, Vol. XXXV; No. 6 at p. 278 (Mar., 1954)

(personal service of summons), was entered and provided that the husband would receive no alimony from the wife, but was silent about the wife receiving alimony. Nine months after the entry of this decree, the wife petitioned for alimony alleging among other things that her husband had promised that if she would not contest the divorce proceeding, that he would provide for the payment therein of certain medical expenses and hospital bills resulting from a certain accident; and that he did not so provide. An order for $25.00 per month alimony was allowed.

The husband contended:

(1) That in absence of some "finding or adjudication in the original decree of divorce with respect to alimony," the wife lost her rights to alimony.

(2) That Section 18 of the Divorce Act, as amended, in part providing for post-decretal alimony, unless it is waived or denied, violates due process of law.

(3) That alimony is not warranted to a wife divorced for her fault.

The Supreme Court, in affirming, stated, pp. 453-454:

> "Prior to 1947 there was no provision in the statutes providing for a petition for alimony after entry of a decree, where the question had not been properly preserved. In 1947 and in 1949 the legislature amended Section 18 of the Divorce Act so that it now provides: irrespective of whether the court has or has not in its decree made an order for the payment of alimony or support, it may at any time after the entry of a decree for divorce, upon obtaining jurisdiction of the person of the defendant by service of summons or proper notice, make such order for alimony and maintenance of the spouse and the care and support of the children as, from the evidence and nature of the case, shall be fit, reasonable and just, but no such order subsequent to the decree may be made in any case in which the decree recites that there has been an express waiver of alimony or a money or property settlement in alimony. Ill. Rev. Stat. 1943, chap. 40, par. 19; Jones Ann. Stat. 109-186. The discussion of cases by appellant where courts of review hold that no alimony can be awarded unless it was provided for in the decree or jurisdiction reserved, do not help the situation in the present case because they were all subject to the provisions of Section 18 of the Divorce Act prior to the amendment of 1947.
>
> The appellant further contends that an award of alimony is not warranted to a wife where the decree is entered because of her desertion. In *Adler* v. *Adler*, 373 Ill. 261, it was held that the Divorce Act of this State has been construed to allow alimony to an erring wife, where all the facts and circumstances warrant the Court in so doing."

This case is the first reported Illinois case interpreting for any purpose this part of Section 18 of the Divorce Act, as amended, and specifically as to its constitutionality, and holding it valid.

Unconstitutionality of "Cooling Off" Period Act

People ex rel Christiansen v. Connell, 2 Ill. 2d. 328 (1954)

The "Cooling Off" Period Act (Ch. 40-Ill. Rev. Stat. Sec. 23-29-1953) required, (except when waived by the court for cause) the filing of a Statement of Intention at least 60 days prior to the filing of a Complaint for Divorce, Separate Maintenance, and Annulment. The plaintiff filed a mandamus action to compel the Clerk of the Circuit Court of Cook County to accept for filing a Complaint for Divorce, without the need for filing a prior Statement of Intention. The trial court denied the petition and direct review by the Illinois Supreme Court was had, based on Constitutional grounds.

In a "per curiam" decision, bolstered by a special concurrence by Chief Justice Schaeffer, the Illinois Supreme Court held this Act unconstitutional, as depriving one of "an immediate remedy." Chief Justice Schaeffer however singled out "improper delegation of non-judicial duties" as the basis for his concurrence.

It is noteworthy that this momentous decision, being necessarily of first impression since it embodied an Act new to Illinois legislative history, was so direct and complete in deciding the law unconstitutional, that the possibility of changing it, to overcome Constitutional objections, is in grave doubt.

Divorce Proceeding Against Insane Defendant for Cause Accruing Before Period of Insanity

Merneigh v. Merneigh, 2 Ill. App. 2d 352 (1954)

The trial judge discontinued a divorce proceeding when he became cognizant of the defendant's insanity, holding that the divorce suit could not be prosecuted as long as the insanity continued. Plaintiff relied on *Iago* v. *Iago*, 168 Ill. 339, where the trial court after appointing a guardian ad litem heard the case and entered a decree of divorce for the plaintiff on a ground existing prior to the time of the

defendant's insanity. Defendant argued that in the Iago case the aforegoing was obiter dictum, and the court only decided that an insane defendant could prosecute a writ of error from a divorce decree rendered against him.

The Appellate Court (1st District) in reversing stated, p. 356:

> "Nothing in the (divorce) Act purports to except proceedings against an insane person. . . In divorce cases, however, the duty is imposed upon the trial court to see that all the rights of the insane person are adequately protected, that a guardian ad litem is appointed to vigorously present the case of the defendant, as was done in the instant case, and that convincing proof is made that the grounds for divorce existed before the period of insanity began."

Although this decision expressly states that it conforms to the precedent established by the Iago case, close examination discerns it to be the first clear expression if not the first statement of law on this significant divorce problem.

On the occasion of our High Holidays

The President, the officers, and the Board of Managers of The Decalogue Society of Lawyers extend to fellow members, their families, and to the entire legal profession their warmest wishes for a very Happy New Year.

IVI NEW CHAIRMAN

Member Leon M. Despres was elected chairman of The Independent Voter's League of Illinois.

Member Marshall Holleb is former head of this organization.

JOSEPH L. NELLIS

Member Joseph L. Nellis is the author of an article entitled "Scope and Limitations on Congressional Committee Action" which has appeared in The Federal Bar Journal in its March, 1954 issue.

MORSELS

The American Judicature Society, composed of 13,000 lawyers and judges, to promote the efficient administration of justice, will move its headquarters from the University of Michigan, Law School, at Ann Arbor, to the new American Bar Center in Chicago as soon as the building is completed.

* * *

Supreme Court Justice Yitzhak Olshan was appointed by President Ben Zvi to serve as President of the Israel Supreme Court. Justice Olshan succeeds Chief Justice Moshe Smoira who resigned because of persistent ill health.

* * *

"No man can ever be a truly great lawyer, who is not in every sense of the word, a good man. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well that it is so. The things we hold dearest on earth —our fortunes, reputations, domestic peace, the future of those dearest to us, nay, liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate, above all things, truth, simplicity and candor; they are the cardinal virtues of a lawyer."

—JUDGE GEORGE SHARSWOOD

* * *

A six year program of cooperation between law faculties of leading Japanese and American universities has been made possible by a grant from the Ford Foundation to the Institute of International Education. The program is designed to foster a better understanding of the important elements of law not common to both nations' legal systems.

—*The New York Times*

* * *

"It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse, and that he should not discontinue his interest in or appearance at meetings of members of the bar."

Canon 33, A. B. A.
Canons of Judicial Ethics

BOOK REVIEWS

Social Security in a Nutshell, by Jack Edward Dwork. Security Publishing Co. 64 pp. $1.00.

Reviewed by DAVID F. SILVERZWEIG

"One dollar may bring you thousands" reads the illustrated cover on this provocative work. Yet this is more than a copywriter's lure. Literally thousands of people, men, women and children, widows, widowers, orphans, and others, who are entitled to social security benefits, are not receiving their payments. This curious situation is attributable to a popular ignorance of how Social Security works.

The United States Social Security Act is the most comprehensive law ever enacted in the interests of social welfare and security. Nearly seventy million people have already come under the Act. Sixty million people are now paying four billion dollars into the fund *each year.* Almost every wage earner and self-employed person, with a few exceptions, is covered by Social Security. And yet, just as most policy holders do not know the content of the fine print in their insurance policies, the vast majority of the people covered by Social Security do not know of the widespread benefits available to them. Thousands entitled to benefits are not receiving them for failure to make application. Unhappily, many lawyers as well as laymen are oblivious to the workings of the Social Security law.

To supply this deficiency, Jack Edward Dwork, a past president of The Decalogue Society of Lawyers, made a comprehensive study and analysis of the Social Security Act. The fruits of his labors are arranged neatly and presented simply and attractively in this little paper-bound volume—truly the whole kernel of Social Security in a nutshell.

Designed to amuse while it instructs, *Social Security in a Nutshell* amply fulfills its mission. Written in popular style, this volume is replete with illustrative examples, simple charts, and amusing cartoons. The text is clear and concise and presented in an unusually attractive format. It is a pleasure to thumb through it.

While prepared for the general public rather than specifically for lawyers, this volume, nevertheless, belongs on every lawyer's shelf. For what law office does not have clients covered by Social Security? This book tells the story of who, when, how much, and all the other customary inquiries about Social Security. And while answering your questions, it will bring you a chuckle too.

Where else can you get all this for one dollar?

Jurisprudence—Men and Ideas of the Law, by Edwin W. Patterson. The Foundation Press. 649 pp. $7.50.

Reviewed by PAUL G. ANNES

The very title of this substantial tome indicates its large scope. It treats of the logical and ethical theories about law and the men who expounded them, and of considerable more besides. It is not so much an inquiry into the operations of various forms of jurisprudence as an analysis of different theories about it and the personal impact of the exceptional men who have been their spokesmen.

The work originally was intended as classroom material for the course in jurisprudence at the Columbia Law School, given there by the author. It fulfills this purpose admirably. It begins with the primary need of definitions: the meanings of jurisprudence; the place of philosophy and related disciplines in the law; the relationship of jurisprudence to the various social sciences. Then comes a discussion of the primary question of "What is Law", followed by an analysis of "What is *the* Law", its essential sources and use. With this basic material out of the way, the author prepares the student, the reader, for the philosophic part of "What should be the Law": a historical presentation of various theories of law, from Aristotle to America's legal realists of our own day. And finally, a presentation of the nature of the judicial process in action in the United States.

The range of this book necessarily makes of it a "tour" of the fundamental conceptions involved in the subject. If it is a book for beginners, it is for beginners with a literate background. To cover so much ground the presentation had to be compact and is not to be read on the run. But it is rewarding reading.

Professor Patterson's opus is one of exposition, not of exhortation. The author has nevertheless indicated his own views, though most unobtrusively:

"that each of the major philosophers has begun his system with several appealing self-evident principles, and I cannot reject it as wholly wrong . . . ; my eclecticism in legal philosophy is based partly on my belief in tolerance, partly on my belief in pluralism, and partly on the inertia of habit . . . ; the generalizations of legal philosophy are very influential, directly or indirectly, upon the attitudes and conduct of officials and citizens in the Western World (probably in the East also) . . . ; I regard Roscoe Pound's theory of Social Interests as the best constructive philosophy of law that I can find."

One may therefore think Professor Patterson's judgment too modest when he says that Jurisprudence, as a study, furnishes only "the articulate grounds for measured conclusion," even if it cannot give final solutions to practical

problems. For theories of jurisprudence do result in practical effects; or else Oliver Wendell Holmes is only a myth, which assuredly he is not.

The main facts contained in this book ought to be the intellectual property of every practicing lawyer. They are so well organized and presented as to appeal to a large body of readers outside of the legal profession. Everyone interested in any of the many related questions bearing on the ultimate nature and functions of law in society will find in this volume a fine introduction to the basic ideas in jurisprudence and the men identified with them.

DECALOGUE APPOINTMENT BOOK AND DIRECTORY

The 1955 Decalogue Appointment Book and Directory, it is expected, will reach our membership early in December. It will contain, as usual, all features that have made it an indispensable aid to the busy lawyer. Oscar M. Nudelman, chairman of the committee in charge of this important aspect of our society's service to its membership, declares that the costs of printing the Directory are constantly mounting.

"Some years ago," he said, "when the idea of presenting the Decalogue members with a free Appointment Book was first conceived it was hoped that the advertisements would pay for its production. Each year, however, there is a deficit because of lack of patronage to cover the costs. This deficit is borne by our treasury which cannot afford the expense. I should like to urge again," he continued, "that members help obtain advertisements for the Directory from their clients and friends. The Appointment Book is a splendid, proved and profitable medium for any firm, business, or enterprise that deals with lawyers. Members who have prospects will do our Society a great service by writing to me at 134 N. La Salle St., or telephoning—FR. 2-1266."

WILLIAM HENNING RUBIN

Member William Henning Rubin was recently elected chairman of the Chicago Tunnel Terminal Corporation. Also, Rubin an officer of the Morrison Hotel Corporation was elected, at the last meeting of its Board of Directors, President of the Morrison Hotel.

SAMUEL W. KIPNIS

Member Samuel W. Kipnis won the first and third prizes in a recent photographer's contest conducted by the Chicago Bar Association.

Lawyer's LIBRARY

NEW BOOKS

American Law Student Association. *Trial moot court handbook.* Chicago (1140 N. Dearborn St.), The Author, 1954. 54 p. Apply. (Mimeo.)

American Society of Composers, Authors, and Publishers. *Copyright law symposium, No.* 5. Nathan Burkan Memorial Competition. N. Y., Columbia Univ. Press, 1954. 302 p. $4.00.

Barron, M. L. *The juvenile delinquent society.* N. Y., Knopf, 1954. 349 p. $5.00.

Boland, D. *A B C guide to the practice of the Supreme Court.* 37th ed. London, Sweet & Maxwell, 1953. 395 p. 30s.

Boston University. *The Gaspar B. Bacon lectures on the Constitution of the United States,* 1940-1950. Boston, Boston Univ. Press, 1953. 541 p. $6.00.

Graveson, R. H. *Status in the common law.* London, Athlone Press, 1953. 151 p. 18s. (University of London legal series, II)

Illinois law and practice. Vol. 5. Brooklyn, N. Y., American Law Book Co., 1953. $12.50.

Kulp, V. H. *Oil and gas rights, with* 1954 *supplement.* Boston, Little, Brown, 1954. 483 p. $15.00 (Consists of Part 10 of American law of property, and a 62 page supplement of new cases and text)

Mann, F. A. *The legal aspect of money.* 2d ed. Oxford, Geoffrey Cumberlege, 1953. 488 p. L2.10s.

Negligence and compensation cases. 3d ser. Vol. I. Chicago, Callaghan, 1953. $12.00.

Pfeffer, Leo. *Church, state and freedom.* Boston, Beacon Press, 1953. 675 p. $10.00.

Steinmetz, K. E. *The law relating to doctor and patient.* Chicago, La Salle Extension Univ., 1953. 49 p. $1.50. (Special lecture)

Seidman, Joel. *American labor from defense to conversion.* Chicago, Univ. of Chicago Press, 1953. 336 p. $5.50.

Tax Institute. *The limits of taxable capacity; a symposium,* November 20-21, 1952. Princeton, Tax Institute, 1953. 184 p. $5.00.

Woodford, F. B. *Mr. Jefferson's disciple; a life of Justice Woodward.* East Lansing, Michigan State College Press, 1953. 212 p. $3.75.

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Oppose "Law of Christ" Amendment to U. S. Constitution

By R. F. BRANDWEIN

Member Brandwein is a graduate of Northwestern and Illinois universities.

National Jewish religious bodies representing all branches of the Jewish faith, and national and local Jewish community relations organizations, joined in urging the Senate Judiciary Committee to reject a proposed Constitutional amendment that would declare that "this nation recognizes the law and authority of Jesus Christ."

The Senate Judiciary Committee has heard testimony in Washington on Senate Joint Resolution 87, introduced by Senator Ralph Flanders, Republican of Vermont. This resolution proposes that there be added as an amendment to the U. S. Constitution a new section, declaring recognition of "the authority and law of Jesus Christ, Savior and Ruler of Nations;" specifying that this shall not be interpreted as sanctioning the "establishment of any particular ecclesiastical organization" or abridgement of freedom of religion, speech or assembly; and empowering Congress to substitute "a suitable oath or affirmation" in the case of any citizen whose religion prevents "unqualified allegiance to the Constitution as herein amended."

The idea to amend the United States Constitution to include a reference to Jesus Christ is not new. At the time Thomas Jefferson's Statute of Religious Freedom was being considered by the Virginia Legislature such an attempt was made, but failed. A similar attempt when the United States Constitution was being written failed. In 1863 the National Reform Association was organized with the express purpose of securing amendments to the Constitution which would place Christian laws on an undeniably legal basis in the fundamental law of the land. This Association has been and still is diligent in efforts to accomplish its purpose.

Any such amendment to the Constitution is foreign to the American concept of religious freedom and the complete separation of Church and State. Since the foundation of our country and the adoption of the Federal Constitution Jews have given undivided support to the Supreme Law of our land. It is now proposed that the loyalty of the Jews of America be divided, because no Jew could recognize the authority and law of Jesus Christ. For a similar reason the amendment is equally objectionable to other non-Christian Americans. Section 3 of the proposed amendment providing that a special oath may be formed for non-Christians is an attempt to single out minority groups by refusing them the right to give unqualified allegiance to every word in the Constitution.

In view of the repeated failures to secure an amendment of this type to the Constitution, one might regard this new attempt as frivolous. However, because of the serious consequences which this amendment would invoke if passed, all non-Christians who consider it a threat to their religious freedom should join in its condemnation.